FILE COPY

Office-Supreme Court, U.S.
FILED
JUN 15 1961
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 1037

ORLEANS PARISH SCHOOL BOARD, ET AL.,
Appellants,

versus

EARL BENJAMIN BUSH, ET AL.,
Appellees;

JIMMIE H. DAVIS, ET AL.,
Appellants,

versus

HARRY K. WILLIAMS, ET AL.,
Appellees;

STATE OF LOUISIANA, ET AL.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

HONORABLE JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
2201 State Capitol Building,
Baton Rouge, Louisiana;
CARROLL BUCK,
First Assistant Attorney General;
M. E. CULLIGAN,
Assistant Attorney General;
GEORGE M. PONDER,
Assistant Attorney General,
Attorneys for Appellants.

Montgomery & Co., "The Brief Specialists", 430 Chartres St. N. O., La.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. ———

ORLEANS PARISH SCHOOL BOARD, ET AL.,
Appellants,

versus

EARL BENJAMIN BUSH, ET AL.,
Appellees;

JIMMIE H. DAVIS, ET AL.,
Appellants,

versus

HARRY K. WILLIAMS, ET AL.,
Appellees;

STATE OF LOUISIANA, ET AL.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

STATEMENT AS TO JURISDICTION.

Appellants, A. P. Tugwell, Treasurer of the State of Louisiana; Roy R. Theriot, State Comptroller; the Lou-

isiana State Board of Education and the individual members thereof; Shelby M. Jackson, State Superintendent of Education, and Jack P. F. Gremillion, Attorney General of the State of Louisiana, appeal from the judgment of the United States District Court for the Eastern District of Louisiana, New Orleans Division, sitting as a three-judge court, entered on the 8th day of March, 1961, declaring unconstitutional Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4, and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960; and, further, enjoining enforcement of said statutes and from otherwise interfering with the operation of the public schools for the Parish of Orleans, by the Orleans Parish School Board, pursuant to the orders of the District Court. And Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

PREVIOUS FILINGS.

Previous filings in these matters have already been effected:

(a) Jurisdictional Statement, *The Legislature of Louisiana, et al., Appellants, v. United States of America, Appellee*, filed in May of 1961;

(b) Jurisdictional Statement, *F. Otway Denny, et al., v. Earl Benjamin Bush, et al.*, filed in March of 1961.

Appellants include herein by reference the above jurisdictional statements and adopt for this purpose their contents.

OPINION BELOW.

The opinion of the United States District Court for the Eastern District of Louisiana, New Orleans Division, is set forth in previous filings.

JURISDICTION.

The *Bush* suit, *Earl Benjamin Bush, et al., v. Orleans Parish School Board, et al.*, was brought under 28 U. S. C. 1331, 28 U. S. C. 1343, 28 U. S. C. 2281, 28 U. S. C. 2284, 28 U. S. C. 2201 and 28 U. S. C. 2202.

The *Williams* suit, *Harry K. Williams, et al., v. Jimmie H. Davis, et al.*, was brought under 28 U. S. C. 1331, 28 U. S. C. 1343 (3), 28 U. S. C. 2281, 28 U. S. C. 2284 and 28 U. S. C. 2283.

The *United States* suit, *United States of America v. State of Louisiana, et al.*, was filed as a direct action.

The judgment and reasons therefor were entered in all cases on March 8, 1961, and notices of appeal were filed in all cases by these Appellants on March 23, 1961.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. 1253, as all cases were consolidated and heard by a three-judge court pursuant to 28 U. S. C. 2281, *et seq:*

STATUTES INVOLVED.

The following statutes of the State of Louisiana were held to be unconstitutional and invalid:

Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960.

Act 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960, and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960.

QUESTIONS PRESENTED.

1. Does the Court have jurisdiction over the subject matters?

2. Are these suits against the State of Louisiana?

3. Are these in fact not suits against the State of Louisiana?

4. Is not the State of Louisiana an indispensable party?

5. Is not the State of Louisiana the "real Party at interest"?

6. Is Jack P. F. Gremillion, Attorney General for the State of Louisiana, a proper party defendant herein?

7. In making the Attorney General of the State of Louisiana a party defendant and enjoining him as such, has not the State of Louisiana and her citizens been denied and deprived of their rights of due process of law?

8. Are not Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4

and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature, for 1960 constitutional and valid?

9. Is not the United States participating herein without authority in law and equity?

10. Should not petitions of the United States *amicus curiae* be dismissed?

11. Should not *Bush* plaintiffs' suit be dismissed for their failure to show that they are parties at interest with proper capacities to bring and sustain their suit?

12. Does not the legislation and legislative action attacked as unconstitutional herein seek to maintain the constitutional rights of the citizens of Louisiana and the United States?

13. Do not these actions as presently maintained violate the constitutional rights of the citizens of Louisiana and the United States?

14. Has not the United States failed to state a claim upon which relief can be granted because of its failure to allege unconstitutionality?

STATEMENT OF THE CASES.

The statements as made in previous filings are adopted and presented here by reference.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

A. The Constitutional Question.

This Court has held that a suit to restrain unconstitutional action by an individual who is a State officer is not a suit against the State. *Ex parte Young*, 209 U. S. 123, and when a judgment merely commands the cessation of allegedly unconstitutional conduct and does not command affirmative action by state officials, such judgment is not against the State. *Georgia Railroad & Banking Co. v. Redwine*, 342 U. S. 299.

This Court has likewise held that the sovereign immunity of a state extends to suits against its officers and officials, where the sovereign though not named as such, is, nevertheless, the only real party against which alone in fact the relief is asked and against which judgment or decree effectively operates. *Mine Safety Appliance Co. v. Forrestal*, 326 U. S. 371; *Re: Ayers*, 123 U. S. 443; *Belknap v. Schild*, 161 U. S. 10; *Minnesota v. Hitchcock*, 185 U. S. 373, and that if the officers who are sued in their individual or personal capacity have no individual or personal interest in the controversy, and that if the suit seeks to control their actions and exercise of functions as officers of the sovereign, the immunity from suit is applicable. *Belknap v. Schild*, 161 U. S. 10; *Worcester County Trust Co. v. Riley*, 302 U. S. 292; *Hagood v. Southern*, 117 U. S. 52; *Cunningham v. Mason & B. R. Co.*, 109 U. S. 446, and that under the circumstances the State is an indispensable party. *Minnesota v. United States*, 305 U. S. 382; *Louisiana v. Jumel*, 107 U. S. 711; *Cunningham v. Macon & B. R. Co.*, 109 U. S. 446; *Hagood v. Southern*, 117 U. S. 52; *Re: Ayers*, 123 U. S. 443; *Pennoyer v.*

McConnaughy, 140 U. S. 1; *Wells v. Roper*, 246 U. S. 335; *Louisiana, ex rel. New York Guaranty & I. Co., v. Steele*, 134 U. S. 230, and that the sovereign's interests and liability cannot be tried "behind its back." *Louisiana v. Garfield*, 211 U. S. 70, and that a state could not be controlled by courts in the performance of its political duties through suits against its officials. *Great Northern Life Insurance Co. v. Read*, 322 U. S. 47; *Chandler v. Dix*, 194 U. S. 590; *Fitts v. McGhee*, 172 U. S. 516; *Murray v. Wilson Distilling Co.*, 235 U. S. 461; *Re: New York*, 256 U. S. 490; *Worcester County Tr. Co. v. Riley*, 302 U. S. 292, and that efforts to force, through suits against officials, performance of acts by a state collide directly with the necessity that a sovereign must be free from judicial compulsion in the carrying out of its policies. *Monaco v. Mississippi*, 292 U. S. 313; *Louisiana v. Jumel*, 107 U. S. 711, and that a state's freedom from litigation is a constitutional right through the Eleventh Amendment. The inherent nature of sovereignty prevents actions against a state by its own citizens without its consent. *Hans v. Louisiana*, 134 U. S. 1; *North Carolina v. Temple*, 134 U. S. 22, and that the Eleventh Amendment provides that: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any Foreign State." This express constitutional limitation denies to the Federal Courts authority to entertain a suit by private parties against a state without its consent. *Hans v. Louisiana*, 134 U. S. 1; *Re: New York*, 256 U. S. 490; *Missouri v. Fiske*, 290 U. S. 18; *United States v. United*

States Fidelity & G. Co., 309 U. S. 506; *North Carolina v. Temple*, 134 U. S. 22; *Hagood v. Southern*, 117 U. S. 52.

Neither the United States Constitution nor the Louisiana Constitution, 1921, as amended, imposes upon the State of Louisiana the duty to provide a public education, and, therefore, it is a political matter as to whether or not a public education will be provided and this matter is not one subject to the jurisdiction of any court.

These judgments compel State action. They command action by State officials which action is purely political in nature and affirmative in fact and substance. The action commanded has been solely and purely formulated by the Court. The decrees direct the school officials and other State officials as to how they shall perform their duties or exercise the discretion vested in them by law. The Court, having itself formulated and established by decrees a system of integration now demands specific performance of this system.

The judgments appealed from are in truth and fact against the State of Louisiana and the Court is without jurisdiction to entertain these suits. The Court has legislated, which legislation is in contravention of the United States Constitution.

B. The Questions Presented in Previous Filings Are Adopted and Presented Here by Reference.

CONCLUSION.

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal and it is respectfully

suggested that this Court may find these cases appropriate ones for reversal and dismissal of the complaints.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General, State of Louisiana;
JACK P. F. GREMILLION, Individually;
A. P. TUGWELL,
Treasurer, State of Louisiana;
CARROLL BUCK,
First Assistant Attorney General;
M. E. CULLIGAN,
Assistant Attorney General;
GEORGE M. PONDER,
Assistant Attorney General;
WELDON A. COUSINS,
Assistant Attorney General;
L. K. CLEMENT,
Assistant Attorney General;
JOHN M. CURRIER,
Assistant Attorney General;
GEORGE S. HESNI,
Assistant Attorney General;
ROBERT S. LINK, JR.,
Assistant Attorney General;
DOROTHY N. WOLBRETTE,
Assistant Attorney General;
JOHN E. JACKSON, JR.,
Assistant Attorney General;
WILLIAM P. SCHULER,
Assistant Attorney General;
HENRY J. ROBERTS, JR.,
Assistant Attorney General.

PROOF OF SERVICE.

I, JACK P. F GREMILLION, Attorney General for the State of Lo siana and attorney for Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of June, 1961, I served copies of the foregoing jurisdictional statement on the several parties hereto as follows:

On Earl Benjamin Bush, et al., Plaintiffs, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to A. P. Tureaud, Esq., and A. M. Trudeau, Esq., 1821 Orleans Avenue, New Orleans 16, Louisiana; with air-mail postage prepaid, to Thurgood Marshall, Esq., and Constance Baker Motley, Esq., 10 Columbus Circle, New York, New York, attorneys for Plaintiffs;

On Harry K. Williams, Plaintiffs, et al., by mailing a copy in duly addressed envelope; with first-class postage prepaid, to Charles E. Richards, Esq., 312 Civic Center Building, New Orleans, Louisiana, attorney for Plaintiffs, and

To Lloyd J. Rittiner, Louis G. Riecke, Matthew R. Sutherland, and Theodore H. Sheppard, Jr., members of the Orleans Parish School Board, the Orleans Parish School Board and James F. Redmond, Parish Superintendent of Schools for the Orleans Parish School Board, defendants, by mailing a copy in a duly addressed envelope with first-class postage prepaid to Samuel I. Rosenberg, their attorney, National Bank of Commerce Building, New Orleans 12, Louisiana, and on Emile Wagner, member of the Orleans Parish School Board, by mailing a copy in a duly addressed envelope with first-class postage prepaid to him

in care of Hibernia Homestead Association, 300 Carondelet Street, New Orleans, Louisiana;

To the United States of America by mailing a copy to M. Hepburn Many, Esq., United States Attorney, Federal Building, New Orleans, Louisiana, in a duly addressed envelope with first-class postage prepaid.

JACK P. F. GREMILLION,
Member of the Bar of the Supreme Court
of the United States,
2201 State Capitol Building.
Baton Rouge, Louisiana.